

**REMARKS****Summary of Office Action**

As an initial matter, Applicants note with appreciation that a signed and initialed copy of the Form PTO-1449 submitted in the Information Disclosure Statements filed June 27, 2006 has been returned together with the present Office Action.

Applicants also note with appreciation that the claim rejection under the judicially created doctrine of obviousness-type double patenting with respect to claims 1-11 of U.S. Patent No. 6,706,673 set forth in the previous Office Action is not repeated in the present Office Action.

Claims 16-49 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Klueppel et al., U.S. Patent No. 5,145,665 (hereafter "KLUEPPEL").

Claims 16-49 are rejected also under 35 U.S.C. § 103(a) as allegedly being unpatentable over Giret et al., U.S. Patent No. 5,409,640 (hereafter "GIRET").

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over KLUEPPEL

Claims 16-49, i.e., all claims of record, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over KLUEPPEL for the reasons of record.

Applicants respectfully traverse this rejection for all of the reasons which have been set forth in the replies to the previous Office Actions. The corresponding remarks are incorporated herein in their entireties.

In addition, Applicants point out that the Examiner has not supported the contention that the teaching of water-soluble Carbopols in KLUEPPEL embraces crosslinked materials (see bottom of page 2 of the present Office Action), and in particular the gel-forming acrylate-alkyl acrylate copolymers recited in the present independent claims (let alone the specific copolymers recited in claims 22 and 38) by any documentary (or other) evidence.

Applicants also disagree with the Examiner that the flavorants in the toothpastes and toothcreams of KLUEPPEL would act as perfumes (page 3, first paragraph of the present Office Action). One of ordinary skill in the art would not consider a flavorant used in a toothpaste or toothcream (i.e., a substance that imparts a pleasant or at least acceptable flavor to the toothpaste or toothcream) to be suitable, let alone desirable, as perfume for incorporation into a cosmetic or dermatological deterative composition. By the same token, one of ordinary skill in the art would clearly not be motivated to incorporate a perfume that is used for imparting a pleasant or at least acceptable smell to a cosmetic or dermatological deterative composition into a toothpaste or toothcream.

Applicants further disagree with the Examiner that "Applicant's recitation of shampoo and shower preparations is a statement of intended use, which is afforded little patentable weight" (page 3, end of second paragraph of present Office Action). Applicants submit that preparations for dental and oral hygiene differ significantly from shampoos and shower preparations (and cosmetic and dermatological deterative preparations in general) with

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respect to, e.g., (acceptable and conventionally used) ingredients and form of the composition. In other words, one of ordinary skill in the art would not be motivated to formulate the toothpastes and toothcreams of KLUEPPEL to make them suitable as shampoos or shower preparations (or any other cosmetic or dermatological deterative preparation).

In this regard, it also is noted that while the present claims do not expressly exclude the presence of a polysaccharide-splitting enzyme (i.e., a mandatory component of the compositions of KLUEPPEL) in the claimed cosmetic or dermatological deterative preparations, incorporation of a polysaccharide-splitting enzyme into the present compositions would obviously not only serve no useful purpose, but may even be potentially harmful to the skin or the hair treated with a corresponding preparation.

It further is pointed out that the Examiner has not cited a single example of a composition which can be used both for dental or oral hygiene and for cleansing hair and/or skin. The Examiner also has failed to explain why KLUEPPEL renders it obvious to employ the compositions for oral and dental hygiene of KLUEPPEL as cosmetic or dermatological deterative preparations by applying them to the skin and/or the hair (see, present claim 49).

The Examiner further has failed to explain why KLUEPPEL renders it obvious to embed gaseous, liquid and/or solid objects in a gel (see present claim 30).

For at least all of the foregoing reasons and the reasons set forth in the replies to the previous Office Actions, KLUEPPEL fails to render obvious the subject matter of any of claims 16-49. Accordingly, the claim rejection under 35 U.S.C. § 103(a) over KLUEPPEL is unwarranted and should be withdrawn, which action is respectfully requested.

Response to Rejection of Claims under 35 U.S.C. § 103(a) over GIRET

Claims 16-49 are rejected also under 35 U.S.C. § 103(a) as allegedly being unpatentable over GIRET.

Applicants respectfully traverse this rejection for all of the reasons which have been set forth in the replies to the previous Office Actions. The corresponding remarks are incorporated herein in their entireties.

In addition, Applicants submit that while GIRET mentions the optional use of anionic polymers in the compositions disclosed therein, it is apparent that the paragraphs of GIRET which make reference to anionic (and amphoteric) polymers are boiler plate statements which are in conflict with other statements in GIRET and do not reflect the actual intentions of the inventors of GIRET. Specifically, the passage from col. 7, lines 33 to 58 states (emphases added):

The compositions of the invention preferably also contain a cationic or nonionic polymeric skin or hair conditioning agent at a level from about 0.01% to about 5%, preferably from about 0.04% to about 2% and especially from about 0.05% to about 1%. The polymer is found to be valuable for enhancing the creaminess and quality of the foam as well as providing a hair or skin conditioning utility.

Suitable polymers are high molecular weight materials (mass-average molecular weight determined, for instance, by light scattering, being generally from about 2,000 to about 3,000,000, preferably from about 5,000 to about 1,000,000).

Useful polymers are the cationic, nonionic, amphoteric, and anionic polymers useful in the cosmetic field. Preferred are cationic and nonionic polymers used in the cosmetic fields as hair or skin conditioning agents.

Representative classes of polymers include cationic and nonionic polysaccharides; cationic and nonionic homopolymers and copolymers derived from acrylic and/or methacrylic acid; cationic and nonionic cellulose resins; cationic copolymers of dimethyldiallylammonium chloride and acrylic acid; cationic homopolymers of dimethyldiallylammonium chloride; cationic polyalkylene and ethoxypolyalkylene imines; quaternized silicones, and mixtures thereof.

Also, the teaching of GIRET is inconsistent in that this document gives a number of specific examples of cationic polymers in the passage from col. 7, line 59, to col. 8, line 12,

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whereas it does not provide a single example of the second class of the (preferred) skin or hair conditioning agents for use in the compositions of GIRET, i.e., the nonionic polymers. Accordingly, one can only conclude that the paragraph at col. 8, lines 12-21 which recites specific examples of suitable anionic polymers was included by mistake and should have been replaced by a paragraph in which specific examples of nonionic polymers are recited.

That the inventors of GIRET had no intention to teach or suggest the use of anionic (or amphoteric) polymers as skin or hair conditioning agents for use in their compositions is supported also by the fact that the only two polymers which are used in the Examples of GIRET for this purpose, i.e., "Polymer 1" and "Polymer 2" (see table at col. 10, lines 5-27), are cationic polymers.

Applicants also point out that a skin or hair conditioning agent is only an optional component of the compositions of GIRET.

The presence of the hair or skin moisturizer discussed in col. 8, lines 32-59 in these compositions is also only optional (in this regard, it is noted that only one of the eight Examples of GIRET employs a hair or skin moisturizer, i.e., glycerin) .

Moreover, even the alkyl polysaccharides set forth in the paragraph bridging columns 5 and 6 of GIRET are only one of several examples of optional nonionic or betaine surfactants that can be employed in these compositions. In this regard, it also is noted that in two of the Examples of GIRET an alkyl polysaccharide is missing.

In other words, in order to arrive at a composition as defined in, e.g., present claim 16 based on the disclosure of GIRET, one of ordinary skill in the art would, *inter alia*, have to make the following choices:

1. employ a nonionic or betaine surfactant;

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2. in view of the decision of 1., employ an alkyl polysaccharide as the optional nonionic or betaine surfactant (instead of, e.g., a C₁₂-C₁₄ fatty acid mono-and diethanolamide or the alkyl betaines of formula (VII) and amido betaines of formula (VIII) set forth in col. 7, lines 8-23 of GIRET);
3. employ a (cationic or nonionic) skin or hair conditioning agent;
4. in view of the decision of 3., employ an anionic polymer as the optional skin or hair conditioning agent (against the teaching of GIRET);
5. in view of the decision of 4., employ a gel-forming acrylate-alkyl acrylate as the skin or hair conditioning agent;
6. employ a hair or skin moisturizer;
7. in view of the decision of 6., employ a water-soluble liquid polyol as the optional hair or skin moisturizer (other choices include essential amino acid compounds found naturally occurring in the stratum corneum of the skin and water-soluble nonpolyol nonocclusives; see col. 8, lines 38-41).

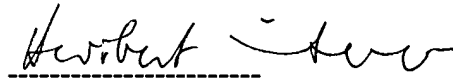
Apparently, even more decisions would have to be made in the case of the present dependent claims. The Examiner has failed to explain why one of ordinary skill in the art would have been motivated to make all of the above decisions.

For at least all of the foregoing reasons and the reasons set forth in the replies to the previous Office Actions, GIRET fails to render obvious the subject matter of any of the present claims. Accordingly, the claim rejection under 35 U.S.C. § 103(a) over GIRET is unwarranted, wherefore withdrawal thereof is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Heike LERG et al.

A handwritten signature in cursive script, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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